

**In re: CHARLES L. HAMBORSKY.  
P&S Docket No. D-98-0036.  
Decision and Order filed July 3, 2000.**

Eric Paul, for Complainant.

Respondent, Pro se.

*Decision and Order issued by Edwin S. Bernstein, Administrative Law Judge.*

This is a disciplinary proceeding under the Packers and Stockyards Act, 1921, as amended and supplemented ( 7 U.S.C. § 181 *et seq.*), hereinafter referred to as the Act, instituted by a complaint filed by the Deputy Administrator, Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture, charging that the Respondent wilfully violated the Act.

Copies of the complaint and the Hearing Clerk's letter of service dated August 28, 1998 with an enclosed copy of the Rules of Practice (7 C.F.R. § 1.130 *et seq.*) governing proceedings under the Act were served upon Respondent by personal service on March 30, 2000. A certificate of service was filed with the Hearing Clerk on April 3, 2000. Respondent was informed in the letter of service that an answer should be filed pursuant to the Rules of Practice and that failure to answer would constitute an admission of all the material allegations contained in the complaint. Respondent was required under section 1.136 of the Rules of Practice (7 C.F.R. § 1.136) to file an answer by April 19, 2000. Respondent failed to file an answer by this date or request an extension of time in which to file an answer. The material facts alleged in the complaint, which are admitted by Respondent's failure to file an answer within the time prescribed in the Rules of Practice, are adopted and set forth herein as findings of fact.

This decision and order, therefore, is issued pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

**Findings of Fact**

1. Charles L. Hamborsky is an individual whose business mailing address was 211 South 12<sup>th</sup> Street, Connellsville, PA 15425-2553, and whose present mailing address is 210 Fourth Ave., Scottdale, PA 15683.

2. Charles L. Hamborsky, hereinafter referred to as the Respondent, is and at all times material herein was:

(a) Engaged in the business of buying and selling livestock in commerce for his own account; and

(b) Not registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce for his own account.

3. The Respondent was notified by certified mail that he was required to register as a dealer and obtain adequate bond coverage or its equivalent before

continuing his livestock operations subject to the Act. The Respondent submitted an application for registration as a dealer on May 27, 1997, that was not accepted because the Respondent failed to submit the required bond or bond equivalent with his application. Notwithstanding repeated notice, the Respondent has continued to engage in the business of a dealer without obtaining an adequate bond or its equivalent.

4. The Respondent, in connection with his operations subject to the Act, on or about the dates and in the transactions set forth below, purchased livestock and failed to pay, when due, the full purchase price of the livestock.

| Purchase Date | Livestock Seller                       | No. of Head | Livestock Purchase Amount | Payment Due per § 409 | Credit From Payments on Account | Date of Last Payment | Unpaid Balance                     |
|---------------|--|-------------|---------------------------|-----------------------|---------------------------------|----------------------|------------------------------------|
| 25-Nov-97     | Mercer Livestock Auction, Inc.         | 22          | \$8,316.92                | 26-Nov-97             | \$5,377.68                      | 06-Feb-98            | \$ 2,939.24                        |
| 02-Dec-97     | Mercer Livestock Auction, Inc.         | 24          | 7,805.91                  | 03-Dec-97             |                                 |                      | 7,805.91                           |
| 09-Dec-97     | Mercer Livestock Auction, Inc.         | 19          | 6,574.72                  | 10-Dec-97             |                                 |                      | 6,574.72                           |
| 16-Dec-97     | Mercer Livestock Auction, Inc.         | 11          | 3,820.21                  | 17-Dec-97             |                                 |                      | 3,820.21                           |
| 23-Dec-97     | Mercer Livestock Auction, Inc.         | 25          | 7,450.48                  | 24-Dec-97             |                                 |                      | <del>7,450.48</del><br>\$28,590.56 |
| 20-Oct-97     | New Wilmington Livestock Auction, Inc. | 23          | \$8,320.67                | 21-Oct-97             | \$6,995.13                      | 20-Feb-98            | \$ 1,325.54                        |
| 27-Oct-97     | New Wilmington Livestock Auction, Inc. | 25          | 9,320.80                  | 28-Oct-97             |                                 |                      | 9,320.80                           |
| 03-Nov-97     | New Wilmington Livestock Auction, Inc. | 15          | 5,328.55                  | 04-Nov-97             |                                 |                      | 5,328.55                           |

|           |  |    |            |           |  |  |                                |
|-----------|--|----|------------|-----------|--|--|--------------------------------|
| 10-Nov-97 | New<br>Wilmington<br>Livestock<br>Auction,<br>Inc. | 28 | 8,133.44   | 12-Nov-97 |  |  | 8,133.44                       |
| 17-Nov-97 | New<br>Wilmington<br>Livestock<br>Auction,<br>Inc. | 38 | \$9,145.07 | 18-Nov-97 |  |  | \$ 9,145.07                    |
| 24-Nov-97 | New<br>Wilmington<br>Livestock<br>Auction,<br>Inc. | 19 | 6,569.33   | 25-Nov-97 |  |  | 6,569.33                       |
| 01-Dec-97 | New<br>Wilmington<br>Livestock<br>Auction,<br>Inc. | 5  | 1,272.40   | 02-Dec-97 |  |  | 1,272.40                       |
| 08-Dec-97 | New<br>Wilmington<br>Livestock<br>Auction,<br>Inc. | 18 | 4,041.52   | 09-Dec-97 |  |  | 4,041.52                       |
| 15-Dec-97 | New<br>Wilmington<br>Livestock<br>Auction,<br>Inc. | 22 | 6,958.61   | 16-Dec-97 |  |  | 6,958.61                       |
| 29-Dec-97 | New<br>Wilmington<br>Livestock<br>Auction,<br>Inc. | 3  | 1,133.75   | 30-Dec-97 |  |  | <u>1,133.75</u><br>\$53,229.01 |

5. As of February 27, 1998, the Respondent had failed to pay \$81,819.57 of the full purchase price of livestock purchased in the above transactions.

6. The Respondent, in connection with his operations subject to the Act, on or about the dates and in the transactions set forth below, purchased livestock and in purported payment therefor issued checks which were returned unpaid by the bank upon which they were drawn because the Respondent did not have and maintain sufficient funds on deposit and available in the account upon which such checks were drawn to pay the checks when presented.

| Livestock Seller               | Purchase Date | Livestock Purchase Amount | Check Number | Check Date | Check Amount | Date Returned NSF      |
|--------------------------------|---------------|---------------------------|--------------|------------|--------------|------------------------|
| Mercer Livestock Auction, Inc. | 09-Dec-97     | \$6,574.72                | 115          | 16-Dec-97  | \$6,574.72   | 23-Dec-97 <sup>1</sup> |
| Mercer Livestock Auction, Inc. | 16-Dec-97     | 3,820.21                  | 116          | 23-Dec-97  | 3,820.21     | 31-Dec-97 <sup>1</sup> |

|  |           |          |      |           |         |                        |
|--|-----------|----------|------|-----------|---------|------------------------|
| New Wilmington Livestock Auction, Inc. | 03-Nov-97 | 5,328.55 | 4    | 03-Nov-97 | 5328.55 | 20-Jan-98 <sup>1</sup> |
| New Wilmington Livestock Auction, Inc. | 10-Nov-97 | 8,133.44 | none | 10-Nov-97 | 8133.44 | 15-Jan-98 <sup>1</sup> |
| New Wilmington Livestock Auction, Inc. | 17-Nov-97 | 9,145.07 | none | 17-Nov-97 | 9145.07 | 15-Jan-98 <sup>1</sup> |
| New Wilmington Livestock Auction, Inc. | 24-Nov-97 | 6,569.33 | 105  | 24-Nov-97 | 6569.33 | 16-Dec-97 <sup>1</sup> |
| New Wilmington Livestock Auction, Inc. | 01-Dec-97 | 1,272.40 | 111  | 08-Dec-97 | 1272.4  | 22-Dec-97 <sup>1</sup> |
| New Wilmington Livestock Auction, Inc. | 08-Dec-97 | 4,041.52 | 112  | 08-Dec-97 | 4041.52 | 29-Dec-97 <sup>1</sup> |

<sup>1</sup>These NSF checks, which were issued in purported payment for livestock purchases found unpaid in Finding of Fact 4 above, remain unpaid and were not replaced.

### **Conclusions**

By reason of the facts found in Finding of Fact 3 above, Respondent has wilfully violated section 312(a) of the Act (7 U.S.C. § 213(a)), and sections 201.29 and 201.30 of the regulations (9 C.F.R. §§ 201.29, 201.30).

By reason of the facts found in Findings of Fact 4 through 6 above, Respondent has wilfully violated sections 312(a) and 409 of the Act (7 U.S.C. §§ 213(a), 228b).

### **Order**

Respondent Charles L. Hamborsky his agents and employees, directly or through any corporate or other device, in connection with his operations subject to the Packers and Stockyards Act, shall cease and desist from:

1. Engaging in business in any capacity for which registration and bonding is required under the Packers and Stockyards Act, as amended and supplemented, and the regulations, without registering and filing and maintaining an adequate bond or its equivalent, as required by the Act and the regulations;
2. Failing to pay, when due, the full purchase price of livestock;
3. Failing to pay the full purchase price of livestock; and
4. Issuing checks in payment for livestock without sufficient funds on deposit and available in the account upon which such checks are drawn to pay such checks when presented.

Respondent Charles L. Hamborsky shall not be registered under the Act for a period of 5 years and, pursuant to section 303 of the Act (7 U.S.C. § 203), Respondent is prohibited from operating without being registered. Provided, however, that upon application to the Packers and Stockyards Programs, GIPSA, a supplemental order may be issued permitting the registration of Respondent at any time after the initial 120 days of this prohibition period upon demonstration by Respondent that all livestock sellers have been paid in full and upon the submission of the required bond. Provided further, that upon application to the Packers and Stockyards Programs, GIPSA, a supplemental order may be issued permitting the salaried employment of Respondent Charles L. Hamborsky by another registrant or packer after the expiration of the initial 120 days of this 5 year period and upon demonstration of circumstances warranting modification of this order.

This decision shall become final and effective without further proceedings 35 days after the date of service upon the Respondent, unless it is appealed to the Judicial Officer by a party to the proceeding within 30 days pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145).

Copies of this decision shall be served upon the parties.

[This Decision and Order became final August 9, 2000.-Editor]

